

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION

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§

§

VS.

§

CIVIL NO. 4:16-CV-996-O(BJ)

§

§

BETTY ORTIZ and  
DANNY ORTIZ

§

§

FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

This case, purportedly removed from the Justice of the Peace Court, Precinct 6, Tarrant County, Texas (Cause No. JP06-16-E00059267), was accompanied by a motion for leave to proceed *in forma pauperis*. Resolution of the motion was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b) and Miscellaneous Order No. 6.<sup>1</sup> The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

In this case, Betty and Danny Ortiz have filed a Notice of Removal of an original petition for forcible detainer filed against them in the Justice of the Peace Court, Tarrant County, Texas.

B. PARTIES

Federal National Mortgage Association, aka Fannie Mae was the plaintiff in state court, and the defendants/removing parties are Betty Ortiz and Danny Ortiz.

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<sup>1</sup>Order for the Adoption of Rules for the Exercise of Powers and Performances of duties by United States Magistrate Judges, signed May 5, 2005.

C. LEGAL ANALYSIS

Removing party Betty Ortiz accompanied the Notice of Removal with a motion to proceed in forma pauperis under 28 U.S.C. § 1915 et. seq. That motion/application includes the income and asset information for Betty Ortiz and a spouse (possibly Danny Ortiz). A review of the financial information submitted in the application/motion reflects that Betty Ortiz and her spouse receive a combined \$2,056<sup>2</sup> a month in income, and she lists one dependant or person who relies upon her for support. The applicable poverty guideline for a family of three is \$20,160. At a combined monthly income of \$2,056, the annual household income of \$24,672 is above the poverty level, and above the listed monthly expenses. The information in this application shows that the removing parties have sufficient resources available to pay the applicable fees. Thus, after review and consideration of the application/motion to proceed in forma pauperis, the undersigned finds the motion to proceed IFP should be denied, and will make such a recommendation.

RECOMMENDATION

It is therefore RECOMMENDED that the October 26, 2016 motion to proceed in forma pauperis [docket no. 3] be DENIED by the district judge.

It is further RECOMMENDED that the district judge inform removing parties Betty Ortiz and Danny Ortiz that this case will be

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<sup>2</sup>The IFP application has inconsistent answers, listing monthly income expected as \$901 for Betty and \$1,155 for her spouse in answer to Question 1, and yet two different "current places of employment" that total \$ 4,470.40 in "gross monthly pay." (Doc. 3, at 1-2.) For purposes of resolving the IFP status, the Court will use the lower amounts.

subject to dismissal/remand without further notice under Federal Rule of Civil Procedure 41(b), unless they pay to the clerk of Court the filing and administrative fees of \$400.00<sup>3</sup> within seven (7) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED  
FINDINGS, CONCLUSIONS AND RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a de novo determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. See 28 U.S.C. § 636(b)(1). Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. See *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th

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<sup>3</sup>In addition to the filing fee of \$350, the District Court Miscellaneous Fee Schedule, effective May 1, 2013, requires payment of an administrative fee for filing a civil action in district court of \$50. See 28 U.S.C.S 1914(a) and District Court Miscellaneous Fee Schedule, note 14.

Cir. 1996) (en banc), superseded by statute 28 U.S.C. § 636(b)(1) (extending the deadline to file objections from ten to fourteen days).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that David Wethy is granted until November 9, 2016 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and is hereby, RETURNED to the docket of the United States District Judge.

SIGNED October 26, 2016.

  
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JEFFREY L. CURETON  
UNITED STATES MAGISTRATE JUDGE